

REMARKS

This responds to the Office Action dated on November 1, 2005, and the references cited therewith.

Claims 1 and 2 are amended, no claims are canceled, and claims 14-18 are added; as a result, claims 1-18 are now pending in this application.

§103 Rejection of the Claims

Claims 1-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander et al. (U.S. Patent No. 6,189,111 B1), in view of Fung (U.S. Patent No. 6,859,882 B2). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the claims contain elements not taught or suggested in the combination of Alexander and Fung.

For example, claim 1 as amended recites "a high availability script execution component operative upon the detection of a failover event to receive a failover script comprising a set of one or more commands and further operable to receive at least one failover attribute and operative to cause the failover script to be interpreted to produce a run-time failover domain." The Office Action correctly states that Alexander does not disclose receiving commands related to a "failing event of the group of nodes." However, the Office Action states that Fung teaches receiving commands at column 55, lines 29-55. Applicant respectfully submits that Fung does not teach or disclose executing commands in a script, rather Fung discloses that the commands may be sent between a management module and other modules of a system. Nowhere do Alexander or Fung teach or disclose executing a failover script upon the detection of a failover event where the failover script includes commands that generate a run-time failover domain. As

a result, the combination of Alexander and Fung fails to teach or suggest each and every element of Applicant's claim 1. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 1.

Claim 2 as amended recites "upon detecting the failover event, executing a failover script, said script comprising a set of one or more commands that when executed determine a run-time failover domain, said run-time failover domain having an ordered list of nodes." As discussed above, the combination of Alexander and Fung fails to teach or disclose executing, upon detection of a failover event, a failover script having commands that determine a run-time failover domain.

Further, claim 2 recites "based on the failover attribute and run-time failover domain, selecting a node upon which to locate a resource." Alexander, at column 6, lines 18-37 states that a node may be selected in one of two ways, either using a "N+1" redundancy mechanism or a node on a "modulo-N basis in which a node j+1 becomes the recipient for the harvest of the (failed) node j." Neither of these two mechanisms uses a failover attribute or a run-time failover domain determined by a failover script executed upon detection of a failover event to perform node selection. Further, Fung does not teach or suggest the recited language.

For the reasons discussed above, the combination of Alexander and Fung fails to teach or disclose each and every element of amended claim 2. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 2.

Claims 3-13 depend either directly or indirectly from claims 1 and 2 and are patentable over Alexander and Fung for the reasons argued above, and are also patentable in view of the additional elements which they provide to the patentable combination. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. MPEP § 2143.03.

New Claims 14-18

Claims 14-18 are added in this response. Support for new claims 14-18 may be found throughout the specification and in particular on page 9, lines 11-18 and on page 14, lines 3-6. Applicant believes that no new matter has been introduced with the new claims. New claims 14-

18 depend from claims 1 and 2, which as discussed above are believed allowable. Applicant respectfully submits that new claims 14-18 are allowable because they are each dependent on an allowable base claim.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3rd day of April 2006.

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Name

Signature